

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

RICHARD R. RANDALL,
Plaintiff,

07-CV-37-BR

ORDER

v.

MICHAEL J. ASTRUE,
Commissioner of Social
Security,

Defendant.

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BROWN, Judge.

This matter comes before the Court on the Commissioner's Motion to Dismiss (#11) Counts 2 and 3 of Richard Randall's Complaint and Randall's Motion to Consolidate (#17). For the reasons that follow, the Court **GRANTS** the Commissioner's Motion to dismiss and **DENIES** Randall's Motion to Consolidate.

In Count One, Randall seeks judicial review of the Commissioner's final decision pursuant to 42 U.S.C. §§ 405(g) and 1382(c)(3). In Count Two, Randall alleges the Commissioner "failed, neglected and refused" to respond favorably to Randall's request pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 for "any and all letters, memos, or other writings, however described, including those stored in computer memory, discussing the number of jobs issue that arises at step 5 of sequential evaluation." In Count Three, Randall alleges the Commissioner violated Randall's constitutional rights by pretending to or actually relying on vocational expert testimony about numbers of jobs that the Commissioner knows or should know are unreliable in violation of Randall's Fifth Amendment right to

substantive due process and/or Ninth Amendment right "to a government that is honest in fact and reasonably competent at what it undertakes to do."

The Commissioner moves to dismiss Counts Two and Three pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). The Court adopts the reasoning of the Honorable Ann Aiken in *Romans v. Astrue*, No. 06-CV-1331-AA (Opinion and Order issued May 16, 2007). Accordingly, the Court **GRANTS** the Commissioner's Motion to Dismiss Counts Two and Three (#11).

In the exercise of its discretion pursuant to Federal Rule of Civil Procedure 42(a), the Court **DENIES** Randall's Motion to Consolidate (#11).

Plaintiff's opening brief as to Count One of the Complaint is due by July 16, 2007. After Count One is fully briefed, the Court will issue an Opinion and Order in due course.

IT IS SO ORDERED.

DATED this 30th day of May, 2007.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge